

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA**

In re

Case No. 02-30767-WRS

Chapter 7

STEPHEN L. PRICE,

Debtor

MEMORANDUM DECISION

This Chapter 7 case is before the Court upon the Trustee's Objection to Claim No. 27 filed by TrustBank. (Doc. 145). TrustBank filed a memorandum in response to the Trustee's objection (Doc. 147) and appeared by counsel at a hearing held on July 14, 2009. For the reasons set forth below, the objection is SUSTAINED and the claim is DISALLOWED as a timely filed claim, but allowed as a tardy claim in accordance with 11 U.S.C. § 726(a)(3).

I. FACTS

This case was initiated on March 11, 2002, when the Debtor filed a petition in bankruptcy pursuant to Chapter 11 of the Bankruptcy Code. On April 24, 2002, the case was converted to a case under Chapter 7. (Doc. 24). On October 14, 2005, the Court issued a notice setting a claims bar date for January 12, 2006. (Doc. 81). TrustBank did not file its Proof of Claim until July 8, 2008. (Claim No. 27).

II. LAW

This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B). This Court has jurisdiction to hear this matter pursuant to 28 U.S.C. § 1334.

In bankruptcy cases under Chapter 7 of the Code, creditors must file a proof of claim if they want to be paid from the estate. With exceptions not pertinent here, “an unsecured creditor . . . must file a proof of claim . . . to be allowed.” Rule 3002(a), Fed. R. Bankr. P. Moreover, to maximize recovery, a creditor must timely file the proof of claim form. In the case at bar, it was originally thought that there would not be a distribution to creditors. However, the Trustee later discovered assets and a Notice of the claims bar date was sent to all creditors. (Doc. 81). See, Rule 3002(c)(5). As this is a case under Chapter 7, distribution to late-filed claims is not denied, however, timely-filed claims are paid first. 11 U.S.C. § 726(a). However, where, as here, the estate cannot fully pay all timely-filed claims, there is no distribution to late-filed claims.

TrustBank argues that its claim should be treated as a timely-filed claim citing the informal proof of claim doctrine. The Charter Company v. Dioxin Claimants (In re The Charter Company), 876 F.2d 861 (11th Cir. 1989)(finding that a motion for relief from the automatic stay was sufficient to invoke the informal proof of claim doctrine). In Charter Company, the Eleventh Circuit held that a motion for relief from the automatic stay could be construed as an informal proof of claim as it “apprised the court of the existence, nature and amount of the appellees’ claims and second whether it made clear the claimants’ intent to hold Charter liable.” Id., at 865. In the case at bar, TrustBank cites two motions that it filed on July 26, 2002, contending that they, either separately or together, are sufficient to trigger the informal proof of claims doctrine. (Docs. 37, 38). Those motions were to conduct a 2004 examination and to extend the time to file an Adversary Proceeding. However, neither motion apprises the Court either of the amount or nature of the liability owed to TrustBank. Moreover, the fact that TrustBank took no further action, after conducting its 2004 examination and extending the §

523(a) and § 727(b) bar dates, calls into doubt whether it intended to hold the estate liable.

Having considered both motions, the Court finds that neither motion, nor both in combination, are sufficient to trigger the informal proof of claim doctrine.

TrustBank further argues in its Memorandum that the liability owed it was listed in the Debtor's schedules. The Court notes that a liability to TrustBank is listed in Schedule F and that it is not marked as disputed. Rule 3003 provides that creditors listed in schedules in cases under Chapter 11 which are not marked as disputed, contingent or unliquidated need not file a proof of claim. However, that rule is limited to cases filed under either Chapter 11 or Chapter 9 and does not apply to cases under Chapter 7. That scheduled liabilities in Chapter 11 cases are automatically allowed, while such liabilities in Chapter 7 cases are not, further underscores the policy that proofs of claim shall be filed in Chapter 7 cases where a creditor hopes to be paid.

The Court notes an additional factor here which further weighs against the position of TrustBank. The Proof of Claim in question here was filed more than two years after passage of the claims bar date. In a case handed down two years ago, this Court disallowed a proof of claim filed only one day after the bar date. In re Laprade, 2007 WL 2301101 (Bankr. M.D. Ala. August 9, 2007). In Laprade, this Court noted that the enforcement of hard deadlines such as claims bar dates can appear harsh in some cases. However, the Bankruptcy Rules quite intentionally limit a bankruptcy court's discretion to extend these deadlines. Laprade, *3. (citing Bankruptcy Rules 9006(b)(1) and 11 U.S.C. § 502(b)(9)). Where, as here, a proof of claim is tardy by more than two years, the equities for allowing tardy claims are much less compelling. Moreover, if such tardy claims were to be routinely allowed, the ability of Chapter 7 trustees to administer cases would be undermined and the reasonable expectations of creditors

who timely file claims would be frustrated. As a final matter, tardy claims may avoid the scrutiny that timely-filed claims must undergo. The act of filing a proof of claim in public, which is subject to scrutiny by all other parties in interest, serves the interests of transparency and integrity. The allowance of a tardy claim undermines these policies and should not be allowed absent weighty reasons.

III. CONCLUSION

The claim of TrustBank is allowed as a tardily-filed claim to be paid pursuant to 11 U.S.C. § 726(a)(3). As the motions filed by TrustBank did not contain information as to the amount and nature of the liability the informal proof of claim doctrine does not apply.

Done this 8th day of September, 2009.

/s/ William R. Sawyer
United States Bankruptcy Judge

c: Susan S. DePaola, Trustee
Floyd R. Gilliland Jr., Attorney for TrustBank